

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: EAST PALESTINE TRAIN DERAILMENT

Case No. 4:23-CV-00242-BYP
JUDGE BENITA Y. PEARSON

STEVEN MCKAY, SUSAN SCHEUFELE, KAYLA
BAKER, BRENDA WILLIAMS, DAWN BAUGHMAN,
DAVID ANDERSON, JAMES ROSS, JON LUKE
AFFELTRANGER, ROSEMARY MOZUCH, CHARLES
MOZUCH, GREGORY SWAN, LANCE BECK,
CLARISSA COHAN, ROLLERENA AUTO SALES
LLC, HAROLD FEEZLE, DALQAN HOLDINGS, LLC,
VALLEY VIEW MPH LLC, COMPETITION &
LUXURY VEHICLE CLUB OF HARLINGTON, LLC,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

NORFOLK SOUTHERN CORPORATION and
NORFOLK SOUTHERN RAILWAY COMPANY,

Defendants/Third-Party Plaintiffs,

v.

OXYVINYLS LP, GATX CORPORATION, GENERAL
AMERICAN MARKS COMPANY, TRINITY
INDUSTRIES LEASING COMPANY,

Third-Party Defendants.

**NORFOLK SOUTHERN RAILWAY COMPANY AND NORFOLK SOUTHERN
CORPORATION'S MOTION TO SEAL**

As required by Section 7(a) of this Court's October 2, 2023 Order (the "Protective Order"), Defendants and Third-Party Plaintiffs Norfolk Southern Corporation and Norfolk Southern Railway Company (together, "Norfolk Southern"), respectfully move the Court—pursuant to Section 7 of the Protective Order and Local Civil Rule 6—to enter an order

permitting Norfolk Southern to file under seal portions of its Appeal of the Magistrate Judge’s December 12, 2023 Order Regarding Deposition Time Allocation and Environmental Sampling (“Appeal”). Those portions are: (a) certain pages of two deposition transcripts that third-party defendants GATX Corporation (“GATX”) and General American Marks Company (“GAMC”) have designated as CONFIDENTIAL ATTORNEYS’ EYES ONLY, and (b) direct references in the Appeal to the testimony on those pages (cited as Exhibits A and F to the Appeal). Norfolk Southern takes no position on the propriety of GATX and GAMC’s designation of those transcripts as CONFIDENTIAL ATTORNEYS’ EYES ONLY or on whether the designated testimony and references to it in the Appeal should remain sealed. However, pursuant to the Protective Order in this case, deposition transcripts designated by any party as CONFIDENTIAL ATTORNEYS’ EYES ONLY are to be protected pending the resolution of any objections to such designations. Dkt. 127 ¶¶ 5, 8.

Granting Norfolk Southern’s motion to seal will adhere to the Protective Order and protect any potentially sensitive and confidential business information of the parties by permitting GATX and GAMC an opportunity to demonstrate that sealing is appropriate under the controlling standard. *See Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1178 (6th Cir. 1983). *See also* Protective Order ¶ 7(c)–(d).

BACKGROUND

On August 2, 2023, the Court entered a Protective Order in this matter. Dkt. 127. Pursuant to Paragraph 5, all deposition transcripts are to be treated as CONFIDENTIAL in their entirety until thirty business days following receipt of the transcript, unless receipt of confidentiality designations is received earlier. Dkt. 127 ¶ 5. Parties may designate as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “CONFIDENTIAL

ATTORNEYS' EYES ONLY" any deposition testimony, either at the time the testimony is given or within the thirty business days following receipt of the deposition transcript. *Id.* After designation, "those portions so designated shall be protected ... pending the resolution of any objection." *Id.* At the depositions of GATX employees Jesus Parada and John Sbragia, counsel for GATX and GAMC designated the transcripts in their entirety as "CONFIDENTIAL – ATTORNEYS' EYES ONLY PURSUANT TO PROTECTIVE ORDER." *See* Exhibits A and F to the Appeal at 1.

Pursuant to Paragraph 8, designations are "subject to challenge by any party or non-party with standing to object," and parties are obligated to meet and confer in good faith regarding any challenges to designations, prior to filing any motions or objections. Dkt. 127 ¶ 8.

Prior to the filing of the Appeal, as required by Paragraph 7 of the Protective Order, Norfolk Southern sought consent of plaintiffs and the third-party defendants to file all of the deposition transcript excerpts cited in the Appeal on the public docket, without sealing—or, consent from any party affirmatively designating transcript excerpts as confidential to file those transcripts under seal. Plaintiffs and third-party defendants OxyVinyls LP and Trinity Industries Leasing Company did not oppose Norfolk Southern's requests to file the exhibits on the public court docket. Third-party defendants GATX and GAMC did not oppose the public filing of certain portions of the transcripts of depositions given by their employees, but informed Norfolk Southern that they seek to assert confidentiality protections over the following deposition transcript excerpts cited in the Appeal:

(1) Pages 20, 139, 140, 187, 188, 269, 270, 271, 272, and 273 of the transcript of the December 5, 2023 deposition of Jesus Parada (Appeal Exhibit A); and

(2) Page 237 of the transcript of the December 7, 2023 deposition of John Sbragia (Appeal Exhibit F).

Accordingly, Norfolk Southern seeks to file under seal: (a) the referenced pages, and (b) the Appeal, save that Norfolk Southern will publicly file the Appeal redacting direct references to the testimony on the referenced pages.

ARGUMENT

Although “[t]he public has a strong interest in obtaining the information contained in the court record,” *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983), the court may order materials be sealed where movants provide a “compelling reason” and narrowly tailor the sealing to serve that reason, *see Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305 (6th Cir. 2016) (citations omitted). The resulting restraining order must be “narrowly drawn and precise.” *See Krause v. Rhodes*, 671 F.2d 212, 219 (6th Cir. 1982) (citing *Carroll v. President and Comm’rs of Princess Anne*, 393 U.S. 175, 183 (1968)). Under the Protective Order in this case, portions of deposition transcripts that have been designated as confidential by a party are to be protected pending the resolution of any objections to those designations. Dkt. 127 ¶¶ 5, 8.

Norfolk Southern takes no position on the propriety of GATX and GAMC’s designation of the Parada and Sbragia transcripts as CONFIDENTIAL ATTORNEYS’ EYES ONLY or on whether the designated testimony and references to it in the Appeal should remain sealed. This motion to seal is narrowly tailored to maintain confidentiality only over materials currently protected from public disclosure pursuant to the parties’ designations and the Protective Order, to give GATX and GAMC an opportunity to demonstrate that sealing is appropriate under the controlling standard.

CONCLUSION

For the reasons stated herein, Norfolk Southern requests that it be permitted to file under seal: (a) Pages 20, 139, 140, 187, 188, 269, 270, 271, 272, and 273 of the transcript of the December 5, 2023 deposition of Jesus Parada; and Page 237 of the transcript of the December 7, 2023 deposition of John Sbragia, and (b) its Appeal of the Magistrate Judge's December 12, 2023 Order, provided that Norfolk Southern will publicly file its Appeal with direct references to the referenced transcript pages redacted.

Dated: December 19, 2023

WILMER CUTLER PICKERING
HALE AND DORR LLP

/s/ Alan Schoenfeld

ALAN SCHOENFELD*
ANDREW RHYS DAVIES*
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel.: (212) 230-8800
Fax: (212) 230-8888
alan.schoenfeld@wilmerhale.com
andrew.davies@wilmerhale.com

DAVINA PUJARI*
CHRISTOPHER A. RHEINHEIMER*
One Front Street, Suite 3500
San Francisco, CA 94111
Tel.: (628) 235-1000
Fax: (628) 235-1011
davina.pujari@wilmerhale.com
chris.rheinheimer@wilmerhale.com

ALBINAS PRIZGINTAS*
2100 Pennsylvania Avenue NW
Washington, DC 20036
Tel.: (202) 663-6000
Fax: (202) 663-6363

Respectfully submitted,

DICKIE, MCCAMEY &
CHILCOTE, P.C.

J. LAWSON JOHNSTON
SCOTT D. CLEMENTS
AARON PONZO*
PAUL ROMAN*
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Tel.: (412) 281-7272
Fax: (412) 888-811-7144
ljohnston@dmclaw.com
sclemenets@dmclaw.com
aponzo@dmclaw.com
proman@dmclaw.com

REDGRAVE LLP

JONATHAN M. REDGRAVE*
MONICA MCCARROLL*
4800 Westfield Blvd., Suite 250
Chantilly, VA 20151
(703) 592-1155
jredgrave@redgravellp.com
mmccarroll@redgravellp.com

albinas.prizgintas@wilmerhale.com

KATHERINE MACKEY*

60 State Street

Boston, MA 02109

Tel.: (617) 526-6000

Fax: (617) 526-5000

katherine.mackey@wilmerhale.com

MARTIN T. TULLY*

230 West Monroe Street, Suite 210

Chicago, IL 60606

mtully@redgravellp.com

* *Pro hac vice*

Counsel for Defendants

Norfolk Southern Corporation and Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2023, I caused a copy of the foregoing to be filed partially under seal with the Clerk of the Court using the Court's CM/ECF electronic filing system, and caused to be served via email unsealed copies of the following documents upon Plaintiffs and the third-party defendants Trinity Industries Leasing Company, GATX Corporation, General American Marks Company, and Oxy Vinyls LP, which will provide electronic notice to all counsel of record:

1. Certain pages of the deposition transcripts of the December 5, 2023 deposition of Jesus Parada and the December 7, 2023 deposition of John Sbragia;
2. Direct references to those transcript pages in Norfolk Southern's Appeal of the Magistrate Judge's December 12, 2023 Order Regarding Deposition Time Allocation and Environmental Sampling;
3. Norfolk Southern's Motion to Seal, and
4. The Proposed Order Granting Norfolk Southern's Motion to Seal.

/s/ Alan Schoenfeld

Alan Schoenfeld (admitted *pro hac vice*)

WILMER CUTLER PICKERING

HALE AND DORR LLP

7 World Trade Center

250 Greenwich Street

New York, NY 10007

Tel.: (212) 230-8800

Fax: (212) 230-8888

alan.schoenfeld@wilmerhale.com

*Counsel for Defendants Norfolk
Southern Corporation and Norfolk
Southern Railway Company*